

REMARKS

This Amendment is responsive to the Office Action dated June 20, 2006. Non-elected claims 9-16, 26-34, 43-71 and 74-83 have been cancelled. Of the remaining elected claims, Applicant has amended claims 1, 3, 22, and 35 -36 and cancelled claims 2, 5, 40, 72 and 73. New claims 84-98 have been added.

Claim Rejections -35 U.S.C. § 112

The Examiner has rejected claims 2, 3, 22, 36, 37 and 40-42 under 35 U.S.C. § 112. Applicant has cancelled claim 2 and made various amendments to claims 3, 22 and 36 to address the indefiniteness perceived by the Examiner.

Claim Rejections -35 U.S.C. § 102

The Examiner has rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 5,803,927 ("Cameron"). Applicant traverses this rejection. To be anticipated, all claim requirements must be found in the cited reference. Claim 1 has been amended to require the steps of determining a second rate to charge an energy storage device based at least in part upon the physiology analysis of the patient and charging the energy storage device at the second rate. This limitation had been in claim 5, which has been cancelled in view of this amendment of claim 1.

Cameron does not teach or suggest this limitation. Cameron discloses a defibrillator which first charges up to a first level and then charges up to a full charge level, but there is no disclosure in Cameron of a step of determining what the charge rate will be, followed by a step of charging at that determined rate. The charging to the full charge level in Cameron of course occurs at some non-zero charge rate. But Cameron's defibrillator does not determine this rate based at least in part upon said physiology analysis as required by amended claim 1. Cameron's defibrillator does not perform a step of determining a charge rate at all. The Examiner appears to be taking the position that whenever a defibrillator charges, it performs a step of determining a charge rate. But

in amended claim 1, the step of determining a charge rate is separate from the step of charging at that rate. These two separate steps cannot be found in Cameron.

Cameron does not disclose these claim limitations and neither does it suggest a modification of its defibrillator to include them. No mention of charge rate is made in Cameron. No mention of charge rate being based in any way on physiological analysis is taught or suggested in Cameron. Cameron teaches that the reason for charging to a first level and then to a second level is a concern about battery size (see col. 10, lines 14-15), and does not mention charge rate or time to completion of the charging process, or recognize any problems or advantages associated with determination of charge rate.

For at least these reasons, amended claim 1 and the claims depending therefrom are not anticipated by Cameron.

Claim Rejections -35 U.S.C. § 103

The Examiner has rejected claims 17-25, 35-42 and 73 under 35 U.S.C. 103(a) as being unpatentable over Cameron. Applicant traverses this rejection. The Examiner has asserted that Cameron discloses a determination of charge rate, saying that the "charge rate is automatically determined". Cameron does not teach anything about charge rate determination. Nothing in Cameron suggests that charge rate could be changed in any way.

Amended Claim 17 requires the step of determining a charge for the energy storage device followed by the step of beginning to charge at the determined rate. Cameron's defibrillator does not determine a charge rate to substantially achieve said charge at a particular instant in time and then begin to charge at the determined rate. Cameron's defibrillator does not perform a step of determining a charge rate at all. The Examiner appears to be taking the position that whenever a defibrillator charges, it performs a step of determining a charge rate. But in amended claim 17, the step of determining a charge rate is separate from the step of beginning charging at that rate. These two separate steps cannot be found in Cameron. Neither can the concept of

determining charge rate so as to achieve full charge at a particular point in time be found in Cameron.

Cameron does not disclose these claim limitations and neither does it suggest a modification of its defibrillator to include them. No mention of charge rate is made in Cameron. Cameron teaches that the reason for charging to a first level and then to a second level is a concern about battery size (see col. 10, lines 14-15), and does not mention charge rate or time to completion of the charging process, or recognize any problems or advantages associated with determination of charge rate.

Amended claim 35 includes the limitation of the step of determining a rate for charging said energy storage device to substantially complete said charging at a desired point in time. As discussed above, Cameron's defibrillator does not determine a charge rate to substantially complete charging at a desired point in time. Cameron's defibrillator does not perform a step of determining a charge rate at all. The Examiner appears to be taking the position that whenever a defibrillator charges, it performs a step of determining a charge rate. But merely starting to charge up does not involve making a determination of what the charge rate will be. In the defibrillator of Cameron, charge rate will not be an output of a step of determining a rate. The charge rate for the Cameron defibrillator will not be actively determined. There is no indication in Cameron that charge rate could be varied or controlled in any way. Neither can the concept of determining charge rate so as to achieve full charge at a particular point in time be found in Cameron.

Cameron does not disclose these claim limitations and neither does it suggest a modification of its defibrillator to include them. No mention of charge rate is made in Cameron. Cameron teaches that the reason for charging to a first level and then to a second level is a concern about battery size (see col. 10, lines 14-15), and does not mention charge rate or time to completion of the charging process, or recognize any problems or advantages associated with determination of charge rate.

Applicant takes issue with the Examiner's assertion that Cameron discloses the same steps as in Applicant's claims and produces the same result. Cameron is directed to a defibrillator in which the needed battery size is reduced by a capacitor pre-charge circuit and controller that charges a capacitor up to a first voltage level soon after the defibrillator is activated, and even before VF has been detected, and then charging the rest of the way up to a full charge level. There is no mention or suggestion of a step of determining the rate at which charging occurs. There is no inkling in Cameron that charge rate could be varied or controlled at all, or that any problem could be solved by making a determination of a desired charge rate. Applicant takes issue with the Examiner's assertion that important claim limitations are an obvious matter of design choice absent a citation of a reference showing these limitations

For at least these reasons, a prima facie showing of obviousness for amended claims 17 and 35 and the claims which depend therefrom has not been made out in the Office Action.

New Claims

New claims 84-89 are similar to claims 1, 3-4 and 6-8 without the limitation of the shock being applied without human intervention. New claim 90 depends from claim 84 and specifically recites a manual defibrillator. New claims 91-97 are similar to claims 35-39 and 41-42 without the limitation of the shock being applied without human intervention. New claim 98 depends from claim 91 and specifically recites a manual defibrillator. These new claims are allowable for at least the same reasons discussed above with respect to claims 1, 3-4, 6-8, 35-39 and 41-42.

Comment on Election/Restrictions

For the sake of clarifying the record, Applicant wishes to respond to remarks made in paragraph 2 of the Detailed Action, that "While claims 58-60, 62, 63, 79, 81 and 83 may not require performance of a physiology analysis, the invention is still fully capable of performing one." It is correct that these claims do not require performance of

AMENDMENT
Application no.: 10/622,868
Filed: July 17, 2003

a physiology analysis. These claims do not include explicit recitation of elements that perform a physiological analysis and so are not necessarily limited to devices capable of performing a physiological analysis.

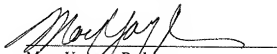
CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Applicant believes that no additional fees are needed for processing of this Amendment. However, if any fees are due, please charge any such fees or credit any overpayment to deposit account number 13-2546. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Respectfully submitted,

Date: Dec. 20, 2006

Physio-Control, Inc.
P.O. Box 97006
Redmond WA 98073


Mary Yawney Redman
Registration No. 29,881

Telephone: (425) 867-4465
Facsimile: (425) 867-4142